

Dated: 10/28/2020



IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

In re:)	
)	Case No. 3:19-bk-1971
CAPSTONE PEDIATRICS, PLLC,)	
)	Chapter 11
Debtor.)	
_____)	
)	
CDS BUSINESS SERVICES, INC. d/b/a)	
NEWTEK BUSINESS CREDIT,)	
)	
Plaintiff,)	
v.)	Adv. Proc. No. 3:20-ap-90140
)	
AMERICA CARES TRUST d/b/a)	
CARENATION,)	
)	
Defendant.)	

ORDER SETTING HEARING ON MOTION FOR LIMITED RELIEF
FROM PRELIMINARY INJUNCTION
AND CONTINUING PRETRIAL CONFERENCE

Defendant America Cares Trust, Inc. d/b/a CareNation (“CareNation”) has filed a Second Expedited Motion and Supporting Memorandum for Limited Relief from the Preliminary Injunction entered by this Court on September 18, 2020 (Docket Entry 12) and a Continuance of the Pretrial Conference set for November 4, 2020 (Docket Entry 6). Based upon the allegations in the motion, good cause exists to schedule an expedited hearing.

After review of the motion and consideration of the relief sought, the Court orders as follows:

A. The pretrial conference set for November 4, 2020 is continued to **2:00 p.m. on January 27, 2021**. The pretrial conference will be conducted telephonically. The call-in information is as follows: Call-In Number: 1- 888-363-4749; Access Code: 8979228#. If circumstances develop such that a party believes an earlier pretrial conference is needed, an appropriate request should be made by motion or submission of an agreed order.

B. If CDS and the Debtor agree with CareNation that the bankruptcy estate has no interest in any portion of the bank account identified as the “Operating Account” in the motion, an agreed order may be submitted modifying the preliminary injunction in that respect. Since Bank of America is not a party to this adversary proceeding, it would not be appropriate for any such agreed order to address the rights of Bank of America in the funds or to direct Bank of America to take any action unless it has consented to the order.

C. If no agreed order is submitted fully resolving the matters raised in the motion, the Court will conduct a hearing at **10:00 a.m. on November 2, 2020**. It has been determined that the Hearing should not be conducted in-person in the courtroom but instead will be handled through video and telephonic means. The procedures for the Hearing follow:

1. Under Federal Rule of Civil Procedure 43, made applicable in this case under Federal Rule of Bankruptcy Procedure 9017, the Court, for good cause in compelling circumstances and with appropriate safeguards, may permit testimony in open court by contemporaneous transmission from another location. The Centers for Disease Control has recommended that all individuals practice “social distancing” and avoid close contact to prevent the spread of the COVID-19 virus. The Court finds that the need for social distancing constitutes good cause and compelling circumstances to permit court hearings and testimony by video and audio as set forth herein.

2. The Hearing will take place with active participants utilizing Zoom video conferencing technology, supplemented with toll-free telephone audio access for any persons wishing to listen to the proceedings without active participation.

3. CareNation must file exhibits for the Hearing no later than noon on **October 30, 2020**, through use of the Court's Electronic Evidence Submission Application ("EESA"), using a numbering system where CareNation's exhibits will start with #1001. Any other party wishing to present exhibits at the Hearings should likewise utilize EESA to the extent reasonably possible in light of the time limitations. Any such additional exhibits should start with a numbering sequence different from the CareNation's exhibits (i.e., starting with #2001, #3001, etc.)

4. The below-listed counsel who have been identified from the Court record as representing interests that may play a substantial role in the Hearing are pre-approved to participate by video and are requested to do so if reasonably possible. Court staff will provide counsel with a link for video access and any necessary instructions via e-mail in advance of the Hearing:

Counsel for Debtor: David W. Houston IV

Counsel for CareNation: William J. Haynes, III & Sam J. McAllester, III

Counsel for CDS: Daniel H. Puryear

Counsel for U.S. Trustee: Megan Seliber

Counsel for Bank of America: Daniel Fleming

5. Any other party who wishes to **actively** participate in the Hearing must file a Request to Participate by Video in the format attached to this order no later than 9:00 a.m. on November 2, 2020. After such request is made, a link for video access to the Hearing and further instructions will be provided by Court staff via e-mail.

6. In the absence of a waiver of the requirement from the Court, witnesses must participate by video.¹ Counsel for the party presenting the witness must coordinate all aspects of the witness's video participation, including taking such steps

¹ Counsel approved to appear by video may share the video link for the Hearings with their witnesses.

in advance as necessary to assure the witness has a working computer or device with a camera, microphone, required bandwidth connection, and instructions in use of Zoom conferencing technology. Witnesses will be sworn in by video and their testimony will be accepted and binding as if they were testifying live in the courtroom.

7. If a witness will be asked to review an exhibit during testimony, counsel must make arrangements in advance to assure that the witness has access to a digital copy of the uploaded exhibit or must be prepared to use the screen-sharing feature of Zoom to display the exhibit after making arrangements in advance with Court staff.

8. Only one participant is permitted per video link and camera. (Counsel should make arrangements so it is not necessary to swap a device with co-counsel or witness during the Hearing but rather each person will have separate access to a device

9. The Court may determine that some testing of the Zoom technology is advisable in advance of the Hearing. In that event, counsel for any participating party shall promptly cooperate in making such arrangements if contacted by the Court staff.

10. In order to assure public access to the hearing in a manner reasonably similar to an in-person proceeding, any person that wishes to listen only and who will not otherwise be participating in the Hearing may access the Hearing via the following Zoom audio-only call-in information:

Toll-Free Call-In Number: 833-568-8864

Meeting ID: 160 6111 5865 (followed by # symbol)

Participant ID: None needed – just press # symbol if requested.

11. All parties participating by either video or audio should make the connection approximately 5-10 minutes before the scheduled start time for the Hearing.

12. During the Hearing, all participants must mute their phone, computer or electronic device when not speaking. Also, all participants appearing by video should:

a. Dress in appropriate court attire;

- b. Ensure their video background is professional and not distracting to the proceedings;
- c. Silence electronic devices including cell phones and notifications on the device being used for the video;
- d. Wait until called upon by the Court before speaking;
- e. Not speak over other participants;
- f. Participate from a quiet location; and
- g. Not leave the room or move the device during the Hearing except for minor camera adjustments when necessary.²

13. Participants are reminded that photographing (including screenshots), recording, or further broadcasting or sharing images from the Hearing is strictly prohibited. Violation of these prohibitions may result in sanctions. All hearings will continue to be recorded using the Court's official digital recording system. The process for requesting an official transcript has not changed.

IT IS SO ORDERED.

² It is important to remember that the Judge and other participants appearing by video can see you during the video even when you are not speaking.

{Style of Case}

REQUEST TO PARTICIPATE BY VIDEO

The undersigned seeks permission to participate by video in the hearing identified below and certifies that the requesting party will comply with the order entered in this case establishing procedures for such hearing:

Subject of hearing:

Date of hearing:

Attorney requesting to appear by video:

Client of attorney requesting to appear by video:

Nature of client's Involvement in the case:

Anticipated extent of participation in hearing (argument, witness examination, etc.):

E-Mail address to provide video access link and additional instructions:

Any other information pertinent to request:

Dated:

Name:

Address:

Phone Number:

E-mail:

This Order has been electronically signed. The Judge's signature and Court's seal appear at the top of the first page.
United States Bankruptcy Court.